



Spring 2022 Newsletter

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DIVERSITY, EQUITY & INCLUSION SPOTLIGHT:

DEMETRA LIGGINS

*By: Matthew W. Bourda**



Demetra Liggins is a partner in McGuireWoods LLP's Houston office. She has practiced bankruptcy law for over 20 years. Demetra's practice focuses on complex restructurings, as well as helping her clients purchase and sell assets in distressed situations, secure financing, and negotiate structure and implement cash collateral orders and debtor in possession financing agreements. Along with being nationally recognized and winning various awards for her work, Demetra frequently speaks on bankruptcy and finance-related topics, in addition to speaking on career goals, branding, and mentorship to minority and female audiences. I first met Demetra when I transitioned into a chapter 11 practice. Her words of wisdom have been a guide to me as a diverse attorney wading through the ever-changing field of corporate restructuring. I am honored for the opportunity to interview Demetra and hope that this piece can likewise serve as a guide for young attorneys in the field.

Where did you grow up? I grew up all over the country, having lived in (at least) eight different states and we lived overseas. My father was in the United States Air Force, so we moved around many times.

Did you have a mentor when you were in law school? I was very blessed to have a mentor in law school. My father is a preacher and one of his parishioners linked me up with a recent law school graduate who was an associate at the largest firm within Alabama. He took me under his wing and gave me insight into the job market and advice throughout my law school career. It was nice to have someone looking out for me who, as a junior associate, was not so far removed from the law school life giving me real, unfiltered advice so that I could hit the ground running once I entered practice.

What was your first job as an attorney? I was a judicial law clerk for the Honorable U. W. Clemon, who was the first black federal judge appointed in the state of Alabama.

What was your first area of practice? After completing my clerkship, I entered big law. At my firm, when I joined, associates were able to split their time among various practice groups as opposed to being placed in one group. Having just completed a federal clerkship, I had an interest in litigation, but also had a growing interest in bankruptcy. When I was in law school, I

also had the opportunity to work with Tamara O. Mitchell as an extern, who is now a United States Bankruptcy Judge for the Northern District of Alabama. Not long after I started, other firms had entered the first salary war, so associates then had to choose a single practice group to join. I decided to go into corporate restructuring.

What was your experience working as an associate in a big firm?

Being an associate in a big firm is challenging. And certainly, being a woman of color within a small group (restructuring in general) did not make the challenge easier. One of the saving graces is that the work was – and still is – super interesting. The social dynamics of integrating into a big firm were difficult to navigate, there was no one person at work who was a go-to for mentorship, and the firm was very homogeneous. While everyone was friendly, I felt a bit of sorts. I didn't have the same background as many of the other associates and therefore did not share the same mindsets or have the same attitudes in the work environment. All of these factors made integration into the big firm environment hard.

You and your sister have a podcast called Corporate Homie.

What is Corporate Homie and how did it come to fruition? I have an identical twin sister named Bemetra who began working in a corporate setting right after we graduated from college. She worked in banking for nearly 15 years before moving to a non-profit. Most recently, she became the President and CEO of the Tampa Bay Partnership in Florida. What she and I found, being women of color working in corporate America, is that there are several hoops, hurdles, and

unwritten rules that women and other individuals of color are either expected to know or experience on a daily basis. So, in 2016, she and I started Corporate Homie. We use our platform to give similarly situated professionals the tools they need to navigate these obstacles and be successful in their given field. We do this by sharing our own experiences and invite guests on the podcast to share their own.

Have you witnessed or experienced unconscious bias as an attorney?

All the time! There have been multiple occasions in which I experienced unconscious bias firsthand, but I'll share one experience that sticks out the most. Several years ago, I was scheduled to depose a witness. When I arrived, the receptionist greeted me immediately saying "we've been waiting for you." Surprised to hear this, because I showed up early, she rushed me over to the conference room where the deposition was going to be held. She pointed to one end of the room and said, "you set up over here." I told her, "no, I think that's where the court reporter is going to set up" to which she responded, "wait, you're not the court reporter?"

You could see the look of confusion, and somewhat shock, in her face, not just because I wasn't the court reporter, but that I don't think it crossed her mind that I was an attorney, much less that I was the attorney conducting the deposition.

How did you become partner in your practice field?

I recently finished Will Smith's memoir and he talks about a past event in which his father made him and his brother build a brick wall at a storefront. He reflected on how

frustrating that task was but was reminded by his father not to focus on building a wall, but rather to focus on laying each brick one by one. This made me think of my career.

Being a young associate, new to town, and without any friends, I met other female attorneys, similar in vintage to myself, that ultimately became my support group. Each one had graduated from a more prestigious law school than me and set out very specific five to ten-year plans with the hopes of becoming partner. One night, while we were together at my apartment, one of them asked me what my five-year plan was, and all I could say was “I just want to make my hours this year.” My journey to becoming partner was brick by brick: perfecting my craft, producing good work product for my bosses that needed little to no revisions, then learning how to generate business. When it came time to learn how to generate business, I went to workshops and learned from my sister, who at the time had a sales role.

For young lawyers, particularly in the mid-level range, you should know how to draft, produce pleadings, and perform the tasks that are fundamental to your practice. For instance, a bankruptcy attorney needs to know how to draft a plan and disclosure statement before they can take a client through bankruptcy. For

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any young professional, you want to learn your craft and become an expert before building a book of business.

Another piece of advice, which I had to learn for myself, is that if there is something you have not been able to do – whether it’s a specific pleading, being first chair in a court appearance, or client function – ask your superiors for that opportunity. Make a list of those things that you want to accomplish for the year and slowly build up. One important lesson my sister and I taught on the podcast is this: no one is going to have any energy around your career but you.

Lastly, what advice would you give to a diverse attorney who is building themselves up through the ranks to be successful? Don’t be afraid to ask for help because help is all around you. Many attorneys, especially those from diverse backgrounds, tend to feel isolated, and as a result we do not seek out the help we need. You cannot be afraid to walk into someone’s office and advocate for yourself. If there is some type of experience you want, go get it. In addition, when you are seeking out help and mentorship, you have to keep your mind open to those around you. Most of the time, your biggest advocate and best mentor may be the person in the room you least expected.



Is Trust a Necessity in Bankruptcy Negotiation and Mediation?

By: *Sylvia Mayer*¹



An oft-touted truism about both negotiation and mediation is that trust is critical to reaching an agreement. But is it?

Parties typically come to mediation or engage in negotiation with a trust deficit. Perhaps parties feel wronged, betrayed, or angry. Perhaps there is no prior history between the parties, or they have a particularly challenging history. Notwithstanding this trust deficit, reaching an agreement remains possible.

Parties often select a mediator based on recommendations, counsel's experience with the mediator, or available data (i.e., subject matter expertise, neutral experience, or stated philosophies). But even if counsel knows the mediator, the actual parties do not. Notwithstanding this lack of pre-existing trust in the mediator, settlement remains possible.

So, is trust critical to reaching a negotiated or mediated agreement?

Consider it from a different perspective. Have you ever done a trust fall? Trust falls are often used as a team-building exercise. One person stands on a raised platform, closes their eyes, and falls backward trusting that the rest of the team will catch them. Could you walk into a room full of strangers and do a trust fall? Or could you stand on the platform and trust that the opposing party will catch you?

Real trust takes time. It requires proven integrity, reliability, and credibility. But we do not have that kind of time in a negotiation or mediation, so how do we bridge the trust divide to get to an agreement?

In my experience, as both neutral and counsel, while we may not be able to create deep and abiding trust in a negotiation or mediation process, we can use trust-building tools to create a trust-like feeling enabling parties, who otherwise distrust one another, to reach a negotiated outcome. The myriad ways to build this feeling include, but are not limited to, these examples:

- a. **Reputation:** The bankruptcy bar is small. So too is the roster of experienced neutrals. It is harder to build a good reputation than it is to get a bad one, so remember that your reputation will precede you in the negotiation. While first impressions matter, there may be two "first" impressions: the one formed before you meet (based on credentials, experience, recommendations, news, or even gossip) and the one formed soon after you meet (based on what

you say, how you say it, and how well you listen).

- b. **Process and Process:** Parties need to understand the process of mediation. This includes understanding the “who, what, when, how, and where” of the mediation, as well as the mediator’s role as a neutral. The same is true in a negotiation. Reducing the fear of the unknown is trust building. In fact, in an academic study analyzing successful mediations and what led parties to “trust” the mediators, they found that the three top factors were the mediator’s (i) explanation of the mediation process, (ii) mastery of the mediation process, and understanding of the issues, and (iii) perceived impartiality.ⁱⁱ

In addition to the steps in the process, an ability to process the experience is a critical component. It is rare for a negotiation or mediation to conclude in 10 minutes. Why? Parties need time to process their emotions, information, options, and proposals. Allowing this time creates a feeling of safety and confidence in the process, which engenders openness to new ideas. That safety and openness lead to greater confidence in the process.

- c. **Safety and Consent:** In *Negotiation Mythbusters: Rethinking Everything You Know About Building Strong Agreements*, the authors assert that trust is a luxury, not a necessity. Instead, they focus on safety and consent as critical to effective

negotiation. So long as each party can say no (consent), the parties can feel safe engaging in dialog around their wants and needs. This combination of safety and consent produces a trust-like feeling, which allows the parties to explore creative solutions and reach an agreement.ⁱⁱⁱ

- d. **Receptivity, Credibility, and Unity:** In *Pre-Suasion: A Revolutionary Way to Influence and Persuade*, the author explores ways to enhance receptivity.^{iv} Essentially, he posits that what you say and do before you make an “ask” influences the outcome more than the actual proposal because the other person is more receptive to the ask. Among other things, he explores the value of creating a sense of unity (a feeling of “we” instead of “me”) and building credibility. We can build credibility and create a sense of unity by acknowledging mistakes, recognizing weaknesses in our position or strengths of the other’s position, and/or identifying shared challenges and common interests. Credibility and unity may prime parties to reach a negotiated outcome.

The list of trust-building tools is long. But these few examples illustrate that, even if we cannot create true trust, we can create a trust-like feeling. Perhaps that is a semantic distinction, but what is clear is that using trust-building tools can bridge a trust divide and pave the path to resolution in a negotiation or mediation.

ⁱ Sylvia Mayer is an Arbitrator, Mediator, and Attorney with S. Mayer Law. She is a member of the National Academy of Distinguished Neutrals and frequently

serves as a neutral in bankruptcy disputes.

ⁱⁱ See Jean Poitras, *What Makes Parties Trust Mediators?*, *Negotiation*

Journal, Vol. 25, No. 3, pp. 307 – 325 (July 2009) (academic study analyzing feedback from parties to mediation and identifying the reasons that parties “trust” a mediator).

iii See Dan Oblinger and Allan Tsang, *Negotiation Mythbusters: Rethinking Everything You Know About Building Strong Agreements*, pages 37-40, (2021) (dispelling the myth that trust is necessary in negotiation); see also Mark Raffan, *The Negotiation Mythbusters Tackle 3 Widely Held Beliefs* (February 28, 2022), <https://podcast.negotiations.ninja/public/67/Negotiations-Ninja-Podcast-40637fd7/e03270d3> (interviewing Dan Oblinger and Allan Tsang about their

book, including their view that trust as a necessity in negotiation is a myth).

iv See Robert Cialdini, *Pre-Suasion: A Revolutionary Way to Influence and Persuade*, pages 173-208 (2016) (exploring the use of “pre-suasion” to achieve favorable outcomes, including the use of unity and credibility); see also Barry Ritholtz, *Masters in Business* (June 18, 2021), <https://podcasts.apple.com/us/podcast/robert-cialdini-on-the-psychology-of-persuasion-podcast/id730188152?i=1000423074089> (interviewing Robert Cialdini about his book).

2022 Elliott Cup Moot Court Competition

By: *Emma Persson**



The 2022 Elliott Cup Moot Court Competition, hosted by the Bankruptcy Law Section for the State Bar of Texas, took place on February 11–12. The competition, named in honor of the late Judge Joseph C. Elliott, U.S. Bankruptcy Judge for the Western District of Texas, prepares law students in the Fifth Circuit to compete at the annual Duberstein Moot Court Competition in New York City. This year's moot court problem, *Touch of Grey Roasters, Inc. v. Casey Jones, Chapter 7 Trustee (In re Terrapin Station, LLC)*, involved a dispute between a chapter 7 trustee and the Debtor's former supplier and landlord over (i) whether a seller of goods is entitled to reduce its preference exposure pursuant to 11 U.S.C. § 547(c)(4) by the value of goods sold even though the debtor in possession paid for such goods in full pursuant to 11 U.S.C. § 503(b)(9) and (ii) whether a trustee must timely perform the obligations of a debtor under 11 U.S.C. § 365(d)(3) by paying rent due prior to the rejection of an unexpired non-residential real property lease but allocable to the period after the effective date of rejection.

With codebooks in hands, teams from Texas, Louisiana, and Mississippi impressed the judges with their bankruptcy knowledge at an in-person competition held at the Eldon

B. Mahon U.S. Courthouse in Fort Worth. In the final round, the Baylor Law School team of Jesse Nelson, Caitlin Huettemann, and Jeff Serfass (as brief writer) faced the University of Mississippi School of Law team of Carter Babaz, Garner Vance, and Chandler Coleman. The Baylor Law School team took home first place, and all teams demonstrated an impressive level of advocacy.

Indeed, both SMU Dedman School of Law teams placed third at Elliott Cup (consisting of Raneen Abdelghani and Julien Tagnon on one team, and Bach Norwood and Emma Lynch (with Nikki Wood as brief writer) on the other). Julien Tagnon of SMU Dedman School of Law received the best oral advocate award, and Shelby Parks of Mississippi College of Law and Emma Lynch of SMU Dedman School of Law received second and third place oral advocate awards, respectively.

Amber Carson of Gray Reed (Vice President of Law School Relations) organized this year's Elliott Cup with assistance from the author (Law School Relations Liaison for the Young Lawyer's Committee) and Amber Fly (Council Member). The Section extends its appreciation to all of the attorneys that volunteered their time to coach, bailiff, and judge the competition. Additionally, the Section extends a special thank you to the following Judges for giving the competitors a true, live courtroom experience: Judge Harlin D. Hale (N.D. Tex.), Judge Edward L. Morris (N.D. Tex.), Judge Stacey G.C. Jernigan (N.D. Tex.), Judge Mark X. Mullin (N.D. Tex.), and Judge Michelle V. Larson (N.D. Tex.).

The proof of how well the Elliott Cup prepares students for the Duberstein is certainly in the pudding. The Duberstein took place on February 26–28, and the Fifth Circuit schools once again excelled at the competition. Baylor University School of

Law and SMU Dedman School of Law tied for third place, and Thurgood Marshall School of Law received an outstanding brief award. Congratulations to all Fifth Circuit teams for their well-deserved accolades.

* Emma Persson is an associate in the Dallas office of O'Melveny & Myers.

Breaking Down JIT and the Supply Chain Crisis

*By: Greg Milligan**



Quite a few supply-chain strategies were developed throughout the years using the famous nostrum, “All other things being equal, we should use the method that costs the least.” This worked well for a long time, but now we are in a situation where the expectation that conditions would remain equal may no longer be valid. Key among these is JIT (Just-in-Time) inventory and supply-chain management.

This article reviews key elements of the supply chain and JIT theory that many bankruptcy attorneys face from time to time with clients, and outlines how many businesses are coping with lingering COVID-19 disruptions to the supply chain, which have been exacerbated in some sectors given the ongoing conflict in Ukraine. Do business leaders think recent conditions will persist long enough to require a new supply chain model? Or is this a temporary situation that will soon be restored to the successful performance of our pre-COVID supply chains?

Started in Japan in the 1950’s and led by Toyota and others, JIT has been

successfully adopted in the U.S. by most major manufacturers including GM, Ford, Harley Davidson, Dell and Hewlett Packard. In theory, the JIT process is meant to reduce waste by minimizing inventory, product handling and the associated carrying costs such as warehousing. It ensures that only what is needed is provided within a very narrow logistics window. By reducing inventory at each step of the production process, companies can minimize capital investment and ensure more efficient conversion of raw material into finished parts.

The stability of the supply chain has made JIT a highly successful approach for the past few decades; however, many believe that the reliance on JIT has bordered on obsessive, especially in an era of low interest rates, which reduce the financial benefit of minimizing inventory. To be effective, JIT requires producers to forecast demand accurately, and it relies on steady production, high-quality workmanship, minimal machine breakdowns and reliable suppliers. If these variables change, the savings can be eliminated and the supply chain disrupted.

Along Came the Disruptor: COVID-19

With lockdowns, quarantines, social distancing and skeletal staffing, the benefits of JIT began to fizzle in the face of the pandemic. JIT was intended to foster supply chain flexibility but has revealed a level of fragility as key suppliers have come under strain, which has led to the loss of speed and nimbleness.

“The reality is that legacy transportation technology and the limitation of traditional supply chain practices are no longer enough to keep pace with the market,” says Bill Driegert, Head of Operations, Uber Freight.

Toilet paper shortages, seriously? Yes, the retail model of reduced store level stocks, combined with increased orders to suppliers, exposed major flaws to the system. Suppliers were unable to keep up with this sudden volatility.

“Just-in-time (JIT) inventory policies account for optimistic levels of demand and supply variations and were rendered suboptimal during the initial panic buying phase,” explains Rajesh Shetty, Associate Director at Boston Consulting Group (BCG). However, even standard risk management methods would not have prepared supply chains for extreme volatility from black-swan type events, but the reliance on aggressive JIT models clearly exposed companies to additional performance degradation.”

Adjustments to Improve the Supply Chain: What options should your clients consider?

- **Increase Supply Chain Technology:** There is already an increased focus in leveraging technology to reduce risks and improve management of supply chains. “In many ways, the widespread impact of COVID-19 has been a forcing-function for innovation, and shippers for whom digital transformation wasn’t a top priority are suddenly moving quickly,”

says Driegert. “We anticipate a spike in supply chain technologies in response to the pandemic,” agrees Shetty. “End-to-end supply chain planning systems including control tower solutions, inventory optimization tools and advanced analytics will be able to mitigate some of the risks associated with JIT while balancing the service-cost trade-offs.”

- **Increase Inventory:** Companies will consider increasing inventory levels (at least to some degree) to spread risk more effectively and have back-up suppliers at the ready. This will likely lead to increased cost due to lower volume discounts; however, this may be a more financially sound decision when the alternative is the inability to satisfy customer needs.
- **Re-evaluate Geographic Sourcing:** Companies will rethink where they source their materials and the related vulnerabilities. With continued uncertainty of delivery times, sourcing supplies closer to the factory may become a stronger consideration, whether that means moving supplies from the far east to closer low-cost countries, or simply looking for suppliers within your home state. This should create new opportunities for domestic businesses (some of which might also be potential clients) to reclaim business

that was previously moved offshore.

BDO, the consulting firm, urged manufacturers to reevaluate their JIT inventory strategies and consider developing alternative sources of supplies or stockpiles of critical materials or products. “The manufacturing industry is at a crossroads,” BDO says in a **report** released in 2020. “On one end are the continued headwinds that manufacturers will face due to the pandemic recession. On the other are emerging opportunities for growth and innovation that organizations cannot afford to ignore. The future will be a balancing act between mitigating risk, navigating continued uncertainty and seizing new opportunities.”

Also, the seven drivers of “Partnering for Production” defined by James H. Greene in the *Production & Inventory Control Handbook* still apply:

- **QUALITY** – zero defects and good work processes
- **TIMELINESS** – zero days early and zero days late, requires complete control of the entire product delivery cycle
- **COMMUNICATIONS** – careful and thorough sharing of information vital for all partners to perform well in the partnership; next to trust, this is the biggest challenge facing would-be partners

- **FLEXIBILITY** – willingness and ability to meet new market opportunities
- **ATTITUDE OF CONTINUOUS IMPROVEMENT** – teams, openness to new ideas, and willingness to try new production approaches
- **HABIT OF COOPERATION** – internal teams, industry consortia, training and assistance for suppliers
- **TRUST** – although trust is the “fuzziest” term, it is easy to identify actions that destroy trust

JIT is Here to Stay

As long as cost continues to be a key business driver, and it will, JIT isn’t going away. There simply isn’t enough profit margin to eliminate JIT and its overall efficiency. When the new business-as-usual is established, JIT will still outcompete other supply chain models. While massive inventory buffers aren’t going to make a return, companies will make adjustments to increase stock levels, leverage more technology-driven inventory management solutions, and make geographic adjustments. These things, along with close collaboration between suppliers, customers and their end markets, will remain imperative to ensure an ongoing, cost-effective supply of goods...Just in time.

* Greg Milligan is the Executive Vice President at Harney Partners and serves as the Non-Lawyer Members Advisor on the Bankruptcy Law Section Council.

2022 Western District Bankruptcy Bench Bar Conference Recap

By: *Danielle N. Rushing**

Photo credits: *Beth Smith and Amber Fly*

The Ronald B. King Western District of Texas Bankruptcy Bench Bar Conference kicked off on April 6th at the historic Shady Villa Hotel in Salado, Texas with a happy hour, corn hole tournament, and party by the pool. The conference opened the morning of April 7th with welcoming remarks and a presentation of the inaugural Hon. Ronald B. King Award to Debbie Langehennig, Chapter 13 Trustee in Austin, Texas.



Attendees networked and connected with fellow practitioners around the Western District and attended timely presentations on business and consumer tracks. The planning committee proudly welcomed luncheon speaker Ret. Ambassador Edward C. Prado for a discussion on “The Trials and

Tribulations of Being Ambassador to a Bankruptcy Country” and honored Judge King for his many years of leadership and judicial service (continuing now on recall status). Thursday evening, attendees were invited to Barrow Brewing Company for entertainment provided by Austin practitioner Lisa Fancher and her band.



After the election of new officers, Judge Mott engaged the audience with a bankruptcy spin on “Who Wants to Be a Millionaire.” At the conclusion of the conference, attendees had the opportunity shoot skeet or play a round of golf with colleagues and Western District bankruptcy judges. The planning committee looks forward to seeing everyone at next year’s conference!

* Danielle is a senior attorney at Dykema and the newly-elected Western District of Texas Bankruptcy Bar Association Secretary.



2022 Southern District of Texas Bankruptcy Bench Bar Recap

By: Maegan Quejada*

Photo credits: Liz Freeman, Conference Chair

After a four-year hiatus, 274 members of the bankruptcy bench and bar—exceeding the prior record of 210 members in 2018—attended the Southern District of Texas Bench Bar in Galveston, Texas from April 18 to 20, 2022.



The conference kicked off with a reception at the Corpus Christi Museum of Science and History on Monday night. In his welcoming remarks, Chief Judge Jones shared two updates. First, Judge Lopez will preside over complex chapter 11 cases beginning in 2023. Second, Judge Rodriguez will serve as the next chief judge of the district. Aside from the wide-ranging and interesting panels, the conference also featured a Hooks baseball game on Tuesday night.



When describing this year's conference, Chief Judge Jones said "the Southern District of Texas bench-bar conference is a unique combination of social and educational interactions between the judges and members of the bar. With judges wandering the audience with microphones armed with chocolate and cookies, to judges serving dinner to all participants at the baseball game, to sharing a taquito at 2 am while discussing third party releases, we all learn from one another while just being human. On behalf of the judges, great thanks to all who participated. See you in 2024!"



* Maegan is a managing associate at Sidley Austin and the outgoing Chair of the Young Lawyers' Committee for the Section.



TROOP MOVEMENTS AND NEWS

Judge Jernigan's new legal fiction thriller novel "Hedging Death" was released on 3/22/22.

Rachel Kubanda and **Lloyd Lim** are now partners in the downtown Houston office of **Kean Miller, LLP**.

The Bankruptcy Law Section sponsored the **Fifth Circuit Bankruptcy Bench-Bar Conference** in New Orleans, LA in February. The Center for American and International Law said attendees reported that the conference was well organized and contained excellent panels/discussions.

Chief Judge Hale was honored at the Fifth Circuit Bench-Bar Conference with the Michelle Mendez Serviam Award. **Congratulations, Judge Hale!**

The Fifth Circuit Court of Appeals has selected **Scott Everett** as the next bankruptcy judge in the Northern District of Texas, Dallas Division. **Congratulations, Scott!**

The Northern District of Texas Bankruptcy Bench/Bar Conference will take place on Thursday, June 16, 2022 in Dallas, Texas at the Statler Hotel. The registration deadline is June 1 (seating is limited to the first 300 registrants).

Registration link: [On or before June 1, 2022](#) or [After June 1, 2022](#).

Do you want to be published in the next BLS Newsletter? If so, please reach out to Jordan Chavez and Jessica Hanzlik with your article topic!



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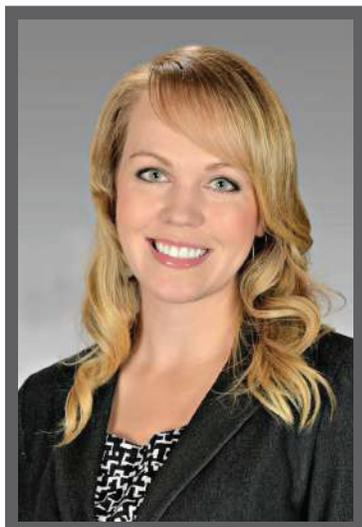
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